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Attorneys for Barbara Brown IRA

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Barbara Brown IRA, by and through her attorneys, hereby objects to the Notice of Trustee's Determination of Claim dated April 29, 2011 ("Determination Letter"), attached as Exhibit A, as described herein.

BACKGROUND

1. Barbara Brown IRA invested in Westport National Bank, which is believed to have invested directly with Bernard L. Madoff Investment Securities, LLC (“BMIS”), and which is, upon information and belief, a “customer” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of BMIS.

2. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See Order, Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; *see also* 15 U.S.C. 78fff-1(a). Barbara Brown IRA is an investor Westport National Bank. Westport National Bank was an investor in BMIS placing millions of dollars with Bernard Madoff and BMIS. Thus, Barbara Brown IRA has an interest in certain claims belonging to Westport National Bank in the BMIS liquidation proceeding.

3. On December 23, 2008, the Court issued an Order directing the BMIS Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See Order* [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.

4. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See Order* at 6 (emphasis added) [Dkt. No. 12].

5. On or about June 29, 2009, Barbara Brown IRA submitted a customer claim form to SIPC, which was designated as Claim No. 014256 by the BMIS Trustee (“Brown IRA Customer Claim”) (Exhibit B).¹

6. On April 29, 2011, the BMIS Trustee sent Barbara Brown IRA the Determination Letter disallowing the claim in its entirety on the basis that “you are not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 7811l(2).” *See* Determination Letter (Exhibit A).

OBJECTION

7. For the reasons set forth herein, Barbara Brown IRA objects to the Determination Letter.

(a) First Objection. Normally, bankruptcy law prevents parties whose claims are derived from the claim of a creditor from seeking to recover on such derived claims from the debtor. Such rules are designed to prevent duplicate recoveries arising from what amounts to a single legal claim. *See* Bankruptcy Code §§ 502(e), 509. However, bankruptcy law also recognizes that the derivative claimant should be permitted to file such a claim when the direct creditor fails or refuses to file or prosecute a claim since, in such cases, there is no risk of a double recovery. For example, bankruptcy law provides that “[i]f a creditor does not timely file a proof of such creditor’s claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.” *See* Bankruptcy Code § 501(b); *see also* Fed. R. Bankr. P. 3005(a). To the extent that this is the case here with respect to Westport National Bank, or any other entity, these principles apply here and it is only appropriate and equitable that Barbara Brown IRA’s claim be considered and honored, as there is no danger of double recovery to the extent that these entities have failed to file and/or prosecute or defend claims on their own behalves or on behalf of Barbara Brown IRA.

¹ In accordance with the Court’s Order dated October 20, 2009 [Dkt. No. 533], Claimant’s personal identification data has been redacted from Exhibit B.

8. Second Objection. The BMIS Trustee has encouraged all those who lost money due to the Madoff Ponzi scheme to file customer claim forms. This includes investors such as Barbara Brown IRA who invested “indirectly” with BMIS. The BMIS Trustee has clearly contemplated a scenario whereby “indirect” investors, such as Barbara Brown IRA, would be entitled to have their claims allowed and/or paid in this proceeding. To the extent that any such “indirect” claims are allowed and/or “indirect” claimants are deemed “customers” under SIPA by virtue of the present statute, any amended statute, any decision or ruling of any administrative agency, any decision or ruling by SIPC or the BMIS Trustee, or any decision or order of any court, they reserve the right to challenge any determination of their claim by the BMIS Trustee.

RELIEF REQUESTED

9. For the reasons stated herein, Barbara Brown IRA’s claim should be allowed insofar as it is part of Westport National Bank’s claim.

10. To the extent that Barbara Brown IRA’s claim is deemed to be filed on behalf of Westport National Bank, Barbara Brown IRA reserves the right to supplement its claim and submit further objections to any Determination of Claim directed to Barbara Brown IRA, including but not limited to the right to object to the BMIS Trustee’s method of calculating “net equity” or other objections to the method by which the BMIS Trustee has calculated the amount of the claim.

11. Barbara Brown IRA requests such other relief as may be just and equitable.

CONCLUSION

12. Barbara Brown IRA reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of Barbara Brown IRA’s right to object on any additional grounds.

13. Barbara Brown IRA reserve all rights set forth in Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

14. Barbara Brown IRA reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

15. Barbara Brown IRA incorporates by reference all reservations of rights set forth in the Brown IRA Customer Claim.

Dated: May 26, 2011

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CERTIFICATE OF SERVICE

I, Stephen A. Weiss, hereby certify that on the 26th day of May 2011, I electronically transmitted a true and correct copy of the foregoing document, OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM, to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing (NEF) to all attorneys of record who are ECF registrants. I also certify that on said date, I caused to be served a true and correct copy of the aforementioned document via federal express on, Irving H. Picard, Trustee, c/o Baker & Hostetler, LLP, 45 Rockefeller Plaza, New York, NY 10111, and the Clerk of the United States Bankruptcy Court, For the Southern District of New York One Bowling Green New York, NY 10004 via regular Mail.

/s/ Stephen A. Weiss
Stephen A. Weiss